

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.707 OF 2019

Rekha Santoshrao Hole, Anjangaon Surji, Dist. Amravati

-vs-

Vaishali Vishal Hole and ors.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri S. M. Vaishnav, Advocate for petitioner.
Smt S. W. Deshpande, Advocate for respondent No.1.
Shri Sachin Zoting, Advocate for respondent No.2.
Shri P. P. Kothari, Advocate for respondent No.3.
Shri Deep Shankar Agnihotri, Advocate for respondent
No.4.

CORAM : A.S.CHANDURKAR, J.

DATE : September 30, 2019

Rule. Heard finally with consent of counsel for the parties.

The order under challenge has been passed below Exhibit-19 by which the application preferred under provisions of Order XLI Rule 27 of the Code of Civil Procedure, 1908 has been rejected by the appellate Court.

2. By relying upon the decision in *Union of India vs. Ibrahim Uddin and anr. (2012) 8 SCC 148* it is submitted that the said application ought to have been considered along with the appeal as per the law laid down therein. By considering the said application at an earlier stage the appellate Court committed an

error.

3. On behalf of the respondent No.1 it is submitted that the application has been rightly rejected. No case was made out to permit additional evidence to lead.

4. On hearing the learned counsel for the parties it is clear that the adjudication of the application in question before considering the appeal on merits was contrary to the law laid down in *Union of India* (supra). It has been clearly held therein that such adjudication has to be considered at the time of hearing of the appeal on merits.

5. Hence on this short ground the order dated 05/04/2018 passed below Exhibit-19 is set aside. The application is restored for being considered along with R.C.A. No.9/2018 on its own merits. The proceedings in the appeal are expedited. Same be decided preferably within a period of six months from today.

The Writ Petition is allowed in aforesaid terms. Rule is made absolute accordingly. No costs.

JUDGE